

### **REMARKS**

In the Final Office Action mailed on January 23, 2008, the Office took the following action: (1) rejected claims 10-13, 16-18, 24, 26, and 33-36 under 35 U.S.C. §102(e) as being anticipated by Kester et al., U.S. Patent No. 7,185,015 (hereinafter "Kester"); and (2) rejected claims 14-15, 25, and 27-28 under 35 U.S.C. §103(a) as being unpatentable over Kester. Applicant respectfully traverses and further requests reconsideration and withdrawal of the rejections in view of the following remarks.

#### **Telephone Interview**

Applicant thanks the Examiner for the telephone interview conducted on Wednesday, April 2, 2008. During the telephone interview, Applicant's attorney, Damon Kruger, discussed claims 10 and 15. Applicant's attorney and the Examiner were unable to reach an agreement as to amendments to claim 10 which would overcome the cited reference Kester. However, the Examiner indicated that more detail in claim 10, particularly relating to the timing of operations in the method, would likely move this case closer to allowance. Applicant thanks the Examiner for this suggestion and has presented a new independent claim 40 to recite the invention as the Examiner has suggested.

Applicant thanks the Examiner for considering the arguments in support of claim 10, as discussed during the interview. These, and other remarks, are included below under their respective sections to assist the Examiner in more fully understanding the Applicant's position on amended claim 10.

### **Rejection under 35 U.S.C. §102(e)**

The Office rejected claims 10-13, 16-18, 24, 26, and 33-36 under 35 U.S.C. §102(b) as being anticipated by Kester. Claims 12 and 34 have been canceled. Applicant respectfully traverses the rejections to the pending claims.

### ***Summary of Cited Reference(s)***

Kester generally pertains to a system and method of monitoring and controlling application files. (Abstract). More specifically, Kester includes methods that “detect the program requested by a user, determine whether the program is in the categorized application database, send the program and program data associated with the program to an application server module if the program is not in the categorized application database, and apply one or more policies that are associated with the program.” (Summary, lines 56-60).

### ***Claim 10***

Claim 10, as amended, recites:

A method comprising:

- determining a current version of program code satisfying an operating policy;

- determining a client version of program code on the client during launch of the program code;

- denying the launch of the program code on a client when the client version of the program code on the client is different from the current version of the program code satisfying the operating policy; and

- updating the program code on the client with updated program code having the current version when the client version of program code on the client is different from the current version of program code satisfying the operating policy.

Applicant respectfully submits that Kester fails to disclose every element of Applicant's claim 10, which is required to uphold a rejection under 35 U.S.C. §102 (MPEP 2131). More specifically, Kester fails to disclose "updating the program code on the client . . . , the updated program code having the version of the program code satisfying the operating policy."

Applicant has formerly presented a similar recitation in dependent claim 15. Claim 15 was rejected in the Final Office Action where the Office relied on 1) Kester, col. 15, lines 32-60, 2) col. 10, lines 17-20, 3) an official notice, and 4) col. 14, lines 27-54. Each citation will be discussed in turn.

Regarding Kester, col. 15, lines 32-60, the office states: "[Kester] teaches downloading and categorizing applications to workstation . . . . It also teaches how applications can be updated on a workstation." The relied upon portion of Kester describes Fig. 9. A review of Fig. 9 shows a decision block at 902 which states "Generate download to workstation." An arrow labeled "yes" points to block 904 which states "Extract policy from policy database." Next, the process moves to block 906 which states, "Create hash/policy table for this workstation" and finally to block 908 which states "transmit to workstation." The specification describes this in detail in Kester, col. 15, line 60 to col. 16, line 14. Nowhere in this section, or anywhere else in Kester for that matter, does Kester disclose "updating the program code on the client . . . , the updated program code having a version of the program code satisfying the operating policy." Instead, Kester discloses updating a "hash/policy table for this workstation" as shown in Fig. 9, reference 906. Therefore, the Kester is only updating a policy table about an application rather than updating the application itself.

The Office also relies on col. 10, lines 17-20 which disclose: "One function of the upload/download module 301 is to receive *collection data* (for example, applications and any additional data associated with the application) from the application server module 102." (Emphasis added). Applicant points out that Kester is referring to "collection data." Applicant urges the Office review Kester's usage of this term, such as by referencing col. 2, lines 49-57 in the summary section which include:

Yet another aspect of the invention is a method of collecting *collection data* for use in *updating a system which controls execution of programs on a workstation*. The method comprises launching a program at the workstation, determining whether the program is stored in a table, and if the program is stored, applying a first rule that is associated with the program. Alternatively, if the program is not stored, the method further comprises posting the program to a database.

(Emphasis added). As defined here, and used throughout Kester, collection data is used in updating a system which controls execution of programs (i.e., hash/policy table), not "updated program code having the version of the program code satisfying the operating policy," as recited in claim 10. Therefore, Kester again fails to remedy missing elements of claim 10 because Kester discloses updating a policy table rather than updating the application itself.

Next, the Office "takes the official notice that downloading a version of a program that can be executed on certain workstations was a well-known practice for the system administrators." (Final Office Action, page 9, lines 3-5). Applicant respectfully submits that the Office's use of Official Notice in the present situation is improper. As set forth in the MPEP, section 2144.03, the Examiner may take Official Notice of facts outside of the record that are capable of instant and

unquestionable demonstration as being "well known" in the art. In the present case, the "determining a version of the program code satisfying an operating policy," in combination with "updating the program code on the client" are not capable of instant and unquestionable demonstration as being well known in the art, precisely because the particular combination of elements is the inventive contribution of the Applicant. The MPEP also states that no documentary proof for Official Notice is needed in cases where such knowledge is of "notorious character." There is no such notorious character regarding the particular combination of elements as presently disclosed.

The foregoing section of the MPEP further requires that assertions of technical facts in areas of esoteric technology must always be supported by citation of some reference. If the Office believes the technical field of this application is not esoteric, then in the absence of citing technical references, 37 C.F.R. 1.104(d)(2) provides that the Applicant is entitled to obtain an affidavit from the Office providing data that is "as specific as possible" in support of a reference made (here, the reference is one of "Official Notice"). The rule further provides that the Applicant is entitled to contradict such an affidavit or provide further explanation in response. Therefore, Applicant respectfully requests a citation of a reference or an affidavit from the Office which disclose "updating the program code on the client when the version of program code on the client is different from the version of program code satisfying the operating policy."

Finally, the Office notes that col. 14, lines 27-54 teaches collecting an inventory of all applications on workstations, and determining if the programs are allowed for execution." (Final Office Action, page 9, lines 7-9). This citation

supports Applicant's assertion above that collection data is used in updating a system which controls execution of programs (i.e., hash/policy table).

In summary, Applicant respectfully submits that Kester fails to disclose each recitation of claim 10, and particularly the recitation “updating the program code on the client when the version of program code on the client is different from the version of program code satisfying the operating policy, the updated program code having the version of the program code satisfying the operating policy.” Kester discloses a list of policies, which *most importantly* do not include “updating the program code” as follows:

These policies can include, for example, allowing the execution of the program, denying execution of the program, alerting the user that the request to run the application will be logged, and allowing the user a specific amount of time in which to run the application.

(Kester, Col. 5, lines 33-37). Had Kester intended to disclose updating the program code as recited in claim 10, Kester would surely have included this action in this example list of policies.

Finally, Applicant has amended claim 10 to recite “determining a client version of program code on the client during launch of the program code” and “denying the launch of the program code on a client when the client version of the program code.” Applicant respectfully submits that Kester fails to teach these recitations when claim 10 is considered as a whole. These amendments are intended to address the Examiners concerns related to the breadth of claim 10 which were discussed during the telephone interview on April 2, 2008.

Claims 11, 13 and 16-18 depend from claim 10, and thus are believed allowable at least for their dependency on the allowable base claim 10. Further, the additional limitations in these dependant claims provide limitations which are not taught by the cited reference. Although all dependant claims may recite limitations not disclosed by Kester, only one dependant claim is discussed below.

Applicant's *claim 17* recites, "notifying a network administrator when the client version of program code on the client is different from the current version of program code satisfying the operating policy." Kester fails to disclose the recitations of claim 17, more specifically, "notifying a network administrator." The Office relies on Kester at column 15, lines 32-60. However, the relied upon section only mentions "network administrator" once, as follows: "The network administrator, via the classification user interface 106, can update the policy database 109." This does not disclose, or even suggest, that the network administrator is notified "when the client version of program code on the client is different from the current version of program code satisfying the operating policy." Instead, it only describes action the network administrator may do (e.g., update the policy database).

In the Final Office Action, the Office supports the rejection from the initial Office Action, stating "Therefore, the administrator is notified of the denial of access to program, and then updates the policy." This conclusion is based on circular reasoning which begins by assuming the network administrator is part of a group of "parents associated with the workstation." However, there is no mention of the network administrator being a parent. Further, even though the network

administrator may have the ability to update the policy database (col 15, line 50), this does not disclose any notification to the network administrator.

The Office also relies on col. 13, lines 4-15 where the user is alerted that the administration will perform more scrutiny of the application.” (Final Office Action, page 4, lines 7-8). However, col. 13, lines 4-15 states, “*alerting the user* that the execution of the application *may* receive further scrutiny by the network administrator.” Applicant submits that 1) this action is directed at a message “alerting the user,” not “notifying a network administrator (as recited in claim 17), and 2) that the language is permissive (i.e., “may”) which counters the Office’s assumption that some network administrator communication must follow this message to the user.

Therefore, Applicant respectfully requests reconsideration and withdrawal of the rejection under Kester to claims 11, 13 and 17-18.

#### ***Claim 24***

Claim 24, as amended, recites:

A system comprising:

- an operating policy; and
- a compliance module accessing the operating policy and denying write privileges during an execution of program code on a client when a version of the program code on the client is different from the version of program code satisfying the operating policy during a launch of the program code.

Applicant respectfully submits that Kester fails to disclose every element of Applicant’s claim 24. More specifically, Kester fails to disclose “denying *write privileges* during an execution of program code on a client,” as recited in claim 24.



As discussed above with reference to Applicant's claim 10, Kester includes a list of policies. The list of policies, included in col. 5, lines 33-37 of Kester fails to disclose "denying write privileges during an execution of program code on a client." The amendment to claim 24 is supported in the specification by at least paragraph [0043]. No new matter has been added. Claim 26 depends from claim 24, and thus is believed allowable at least for its dependency on the allowable base claim 24. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection to claims 24 and 26.

### ***Claim 33***

Regarding claim 33, Applicant submits that Kester fails to disclose the recitations in claim 33 for similar reasoning as presented above regarding claim 10. Claims 35-36 depend from claim 33, and thus are believed allowable at least for their dependency on the allowable base claim 33. Further, the additional limitations in these dependant claims provide limitations which are not taught by the cited reference. Although all dependant claims may recite limitations not disclosed by the cited reference, only claim 36 is discussed below.

Claim 36, as amended, recites: "wherein the updating the program code on the client includes transmitting a patch to the client for installation on the client, the patch including a notification of the patch being at least one of information about the patch and an acceptance option for installing the patch." Applicant respectfully submits that Kester fails to disclose "transmitting a patch to the client for installation on the client" or "a notification . . . being at least one of

information . . . or an acceptance option.” A review of Kester fails to disclose a patch or notification.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection to claims 33 and 35-36.

### ***Rejection under 35 U.S.C. §103(a)***

The Office rejected claims 14-15, 25, and 27-28 under 35 U.S.C. §103(a) as being unpatentable over Kester. Applicant respectfully traverses. For the reasons presented above, Applicant believes claims 10 and 24 are in condition for allowance. Claims 14-15 depend from allowable base claim 10 while claims 25 and 27-28 depend from allowable base claim 24. Therefore, Applicant respectfully requests reconsideration and withdrawal of the rejection to claims 14-15, 25, and 27-28.

### ***New Claims***

Applicant has added new claims 37-38 which depend from claim 10 via intervening claim 15, claim 39 which depends from claim 24 via intervening claim 28, and independent claim 40. Applicant respectfully submits that each of these new claims 37-40 further recites subject matter not disclosed or taught by Kester.

The subject matter of claims 37-38 and 40 is supported in the specification by at least paragraph [0058] to [0060]. The subject matter of claim 39 is supported in the specification by at least paragraph [0043]. No new matter has been added.

Applicant respectfully requests favorable examination of the newly added claims.

**Conclusion**

Claims 10-11, 13-18, 24-28, 33 and 35-40 are in condition for allowance. Applicant respectfully requests reconsideration and issuance of the subject application. If there are any remaining matters that may be handled by telephone conference, the Examiner is kindly invited to telephone the undersigned.

Respectfully Submitted,

Date: 2008-04-23

By: \_\_\_\_\_

**David S. Lee**  
Reg. No. 38,222  
**Damon J. Kruger**  
Reg. No. 60,400  
Lee & Hayes, PLLC  
(206) 315-7918